

must be supported by reasons. The weight or value of every such report must depend on the report itself and the circumstances of each case. If any party thinks it in his own interest to impugn it, he may either rely on any inadequacy or infirmity in the report himself or he may require the examiner produced for cross-examination. The option is in his hands and nothing can be fairer. It is not for the judge to assist either party in adducing evidence.

As to the second point, we would deprecate generally the admission of additional evidence on appeal except in clearly exceptional circumstances. The adversary system in our trials is hardly compatible with allowing *lacunae* in the case of any party to be filled in by afterthoughts or countenancing reconstruction of any case after it has failed at the trial.

In this instance we have also felt it our duty to set right a miscarriage of justice. The charge here was under section 4(1) of the Dangerous Drugs Ordinance, 1952, the offence consisting in the act of importation. The master of the vessel had admitted his own personal responsibility for so doing. The assorted crew of 6, who merely helped in the voyage and had no say affecting their destination, could not be said to be in any way participating in the offence. The doctrine of absolute liability was satisfied by the conviction of the master but the net had been cast so wide that the innocent had also been caught. We have therefore quashed the conviction of all the other six appellants.

Appeal of first appellant dismissed.

Convictions of the other appellants quashed.

Solicitors: Joseph & Son.

LIM GAW TEONG & ANOR. v. DANIEL & ANOR.

[O.C.J. (Ali J.) February 24, 1968]

[Muar — Civil Suit No. 147 of 1964]

Negligence — Vicarious liability — Motor accident — Car driven for mutual interest of driver and owner.

Damages — Personal injuries — Loss of future earnings — Shortening of leg by 1½".

The plaintiffs claimed damages in respect of personal injuries sustained by them in a road accident involving a car driven by the first plaintiff and a car driven by the first defendant. The second defendant was made a party to the proceedings by reason of her ownership of the car. The second defendant had agreed to sell the car to the first defendant. At the time of the accident, the car was driven by the first defendant for the purpose of testing it. It was the contention of the plaintiffs that the first defendant was negligent in driving on the wrong side of the road, and that the second defendant was vicariously liable for such negligence.

Held, allowing the claim: (1) the circumstances of the case showed that the first defendant was negligent in dangerously driving on the wrong side of the road

A when he knew or ought to have known that a car coming from the opposite direction;

(2) the owner of the car was liable for the negligence of the driver as the car was driven partly for the owner's purpose and partly for the purpose of the driver.

Cases referred to:—

(1) *Smith v. Moss* [1940] 1 All E.R. 469.

B (2) *Ormrod v. Crosville Motor Services Ltd. & Anor.* [1953] 2 All E.R. 753.

(3) *Hewitt v. Bonvin* [1940] 1 K.B. 188.

CIVIL SUIT.

D. A. Devadason for the plaintiffs.

C *E. Majeed* for the defendants.

Cur. Adv. Vult.

Ali J.: This is an action for damages arising from personal injuries sustained by the plaintiffs in a motor accident involving a car driven by the 1st plaintiff and the car driven by the 1st defendant. The 2nd plaintiff was travelling as a passenger in the 1st plaintiff's car. It was common ground that the accident occurred on the 16th June, 1959, at about 11 p.m. on the 1½ milestone Kluang/Batu Pahat Road, and at the time of the accident the 1st plaintiff was driving from the direction of Kluang and the 1st defendant from the direction of Batu Pahat. On the pleadings the case for the plaintiff is that the 1st defendant had negligently encroached on the wrong side of the road while that of the 1st defendant is that it was the 1st plaintiff who had encroached on the wrong side of the road. The 2nd defendant, who is a party to these proceedings by reason of her ownership of the car, has denied that the 1st defendant was her servant or agent.

On the question of negligence the 1st plaintiff's evidence was that at about 1½ miles from Batu Pahat he saw a vehicle coming from the opposite direction travelling in a zig-zag manner. He said that on seeing this he drove his car to the edge of the road to the left but failed to avoid a collision. The police sketch plan establishes beyond doubt that the collision occurred fairly close to the plaintiffs' correct side of the road. The petrol stains and broken pieces of glasses on the road as indicated in the plan fairly confirm or suggest that the accident had occurred in the manner described by the 1st plaintiff. The nature of the damage to his car, as shown in the photographs, further suggests that it was caused by a force coming from the front offside. As the road was 21 feet wide it is reasonable to infer that the 1st defendant had been driving well on the wrong side of the road when it collided with the plaintiffs' car which, as can be seen from the photographs, was a small vehicle. Notwithstanding the effect of the evidence already stated the 1st defendant insisted that the plaintiffs' car had encroached on his side of the road. He did so not because he actually saw what happened but

because he assumed it to have happened as he had just passed three lorries. This is what he said:—

"To me it appeared accident took place on my right of way."

When asked to elaborate in cross-examination he further stated:—

"I said it appeared accident happened on my right of way because I had just passed 3 lorries."

In all the circumstances of this case I am forced to the conclusion that the 1st defendant was negligent at least for dangerously driving on the wrong side of the road when he knew or ought to have known that a car was coming from the opposite direction. As regards the 2nd defendant, I find her liable as owner of the car for the following reasons. She has admitted in her evidence that the car was to be sold to the 1st defendant at an agreed price. She gave the 1st defendant permission to use the car for one or two days which, according to the 1st defendant, was for the purpose of testing it. The evidence fairly suggests that both the 1st and 2nd defendants are strangers and that but for the sale arrangement the 1st defendant would not have been allowed to use the car. There was what I may say a mutual interest between the two to complete the bargain. This was the sale of a second hand car and the 1st defendant had to be satisfied with its performance. As far as the 2nd defendant was concerned, it was in her interest that the 1st defendant should be allowed to test it, otherwise the sale would not go through. In this context it was, therefore, partly for her own purpose and partly for the purpose of the 1st defendant that the car had to be given to the latter for testing. The position of the 2nd defendant is no different from that of the owner of the car in *Smith v. Moss*.⁽¹⁾ The principle as stated by Denning L.J. in *Ormrod v. Crosville Motor Services Ltd. & Anor.*⁽²⁾ at p. 754, was:—

"It has often been supposed that the owner of a vehicle is only liable for the negligence of the driver if that driver is his servant acting in the course of his employment. That is not correct. The owner is also liable if the driver is his agent, that is to say, if the driver is, with the owner's consent, driving the car on the owner's business or for the owner's purposes. In the present case the driver was, by mutual arrangement, driving the car partly for his own purposes and partly for the owner's purposes. . . . The law puts an especial responsibility on the owner of a vehicle who allows it to go on the road in charge of someone else, no matter whether it is his servant, his friend or anyone else. If it is being used wholly or partly on the owner's business or for the owner's purposes, the owner is liable for any negligence on the part of the driver. The owner only escapes liability when he lends it or hires it to a third person to be used for purposes in which the owner has no interest or concern: see *Hewitt v. Bonvin*."⁽³⁾

On the question of damages it is convenient at this stage to dispose of the claim by the 2nd plaintiff. Although at the trial he was represented by counsel, he did not appear and therefore gave no evidence to support his claim for

A special damages. There will, therefore, be no award to him under the heading special damages. As regards general damages, the injuries he suffered may generally be described as minor. In the absence of any agreement I would award him \$500 as general damages with costs to be taxed on the High Court scale.

B The agreed medical report on the 1st plaintiff shows that he was in the Batu Pahat District Hospital from the 16th of June up to the 22nd of August, 1959, a period of 67 days. His injuries were:—

- C 1. Compound fracture right mid femur upper fragment penetrating out from the wound. Thigh completely distorted.
2. Simple fracture mid 1/3 of right humerus.
3. Lacerated wounds above right eyebrow 2" long bleeding.
4. Lacerated wounds around right elbow joint.
5. Lacerated wound left knee.

D X-ray examination showed that he had:—

1. Cominuted compound fracture upper 1/3 right femur.
2. Simple fracture mid 1/3 right humerus.

On 27th July, 1967, he was again seen by Dr. Roe at the Kluang Hospital, whose report says:—

E "Patient able to walk with a limp. No pain in right thigh, right arm or head.

The wounds in forehead and right thigh have healed well. The compound fracture of the right femur has healed with slight forward bowing of the femur. The fracture of the right humerus has healed. There is fracture of the lateral condyle of the right humerus which has healed with fibrous union.

F There is a 1½" shortening of the right femur. The right thigh and right calf shows ½" wasting when compared to the left side. Movements of both hip joints are equal. The right knee can be flexed from 180 degrees to 60 degrees only.

The patient is well and the 1½" shortening of right femur can be fully compensated by a ½" raised heel to the right shoe."

G At the hearing there was agreement that the award under the heading of pain and suffering be fixed at \$13,000 and that future loss of earning be assessed by the court. According to the 1st plaintiff, he worked as a motor mechanic for Ah Meng Motors before the accident. He claimed to have earned \$8 a day. Although this had not been seriously challenged by the defence his failure to call his employer to substantiate his statement warned me against the possibility of the claim being exaggerated. It could be that the 1st plaintiff was an ordinary motor fitter employed by the workshop to assist the specially-trained foreman. As a fitter his work would involve the use of his hands for dismantling parts of lorries and motor cars and putting them back after the repairs have been done. Putting it at its highest I would be prepared to accept that his daily earnings could not be more than \$6. Taking this figure and in view of the fact that he is at present earning only about \$3 a day there

would be loss of income of \$3 per day or \$90 per month. He was about 20 years of age at the time of the accident and if he had continued working there is every reason to believe that on his retirement he would, but for the accident, be earning more. Of course there would be the usual hazards of life to consider and taking this into account there would at least be 25 years expectation of working life. From the figures given in the annuity table the future loss of earnings would be \$15,217.20. Adding the sum of \$13,000 to this I award under the heading of general damages \$28,217.20. As regards his claim for special damages, except for one item which relates to food and nourishment the rest had been fairly substantiated. There will be an award under this heading for the sum of \$752.

Accordingly there will be judgment for the 1st plaintiff for the sum of \$28,217.20 general damages and \$752 special damages with costs to be taxed. As already indicated there will be judgment for the 2nd plaintiff in the sum of \$500 but that costs be taxed on the High Court scale.

Judgment for the plaintiffs.

Solicitors: D. A. Devadason; Elyas Majeed & Co.

BAJAJ TEXTILES LTD. v. GIAN SINGH & CO. LTD.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Ambrose J.) February 29, 1968]

[Singapore — Federal Court Civil Appeal No. Y. 37 of 1967]

Sale of goods — Goods sold and delivered — Balance of price of — Counterclaim — Amount due on running account — Limitation of action — Part payments on account — Transfer of liabilities.

This appeal arose out of an action in which the plaintiffs claimed \$1,336.35, being the balance of the price of goods sold and delivered to the defendants. The appeal was brought by the plaintiffs and concerned the defendants' counterclaim for \$690,377.66 on a running account. The defence to the counterclaim was that the defendants owed to the plaintiffs \$11,846 on the running account. On April 24, 1967, the plaintiffs amended their defence to the counterclaim by pleading limitation. The trial judge held that a claim on a running account was a cause of action known to the law, and ordered that the registrar take an account of all transactions on the running account between the defendants and the plaintiffs from May 14, 1951, to November 31, 1962, and kept in the books of Gian Singh & Co. and Gian Singh & Co. Ltd.

The plaintiffs appealed against the decision of the trial judge on four grounds: (1) the learned trial judge erred in permitting the defendants to put forward a counterclaim for the amount due on a running account which was not a cause of action known to the common law; (2) the learned trial judge erred in finding that the plaintiffs' defence of limitation failed by reason of part payments made by the plaintiffs to the defendants on account generally. Such part payments were not pleaded

A by the defendants in their reply to the defence to counterclaim; (3) the learned trial judge was wrong in holding that the debts of Bajaj Textiles were transferred to the plaintiffs and became the liability of the plaintiffs; (4) the trial judge erred in permitting the defendants to give evidence of transactions of which no or insufficient particulars had been filed pursuant to several orders for particulars with which the defendants have failed to comply.

B Held, dismissing the appeal: (1) the amount due on a running account is a cause of action known to the common law;

(2) the learned trial judge was perfectly right in applying the case of *Re Footman Bower & Co. Ltd.*⁽¹⁾ and deciding against the plaintiffs on the issue of limitation;

C (3) the balance sheets produced at the trial clearly supported the view that plaintiffs took over the liabilities of Bajaj Textiles and, therefore, there was no substance in the third ground of appeal;

(4) it was incorrect to state that the defendants had not complied with several orders for particulars. The fourth ground of appeal was accordingly devoid of substance.

D Case referred to:—

(1) *Re Footman Bower & Co. Ltd.* [1961] 2 All E.R. 161.

CIVIL SUIT.

K. A. O'Connor for the appellants.

E L. A. J. Smith (V. K. S. Narayanan with him) for the respondents.

Cur. Adv. Vult.

Ambrose J.: This appeal arises out of an action in which the plaintiffs, Bajaj Textiles Ltd., claim \$1,336.35 cts., being the balance of the price of goods sold and delivered to the defendants, Gian Singh & Co. Ltd. The appeal is brought by the plaintiffs and concerns the defendants' counterclaim for \$690,377.66 cts. on a running account. The defence to the counterclaim is that the defendants owe the plaintiffs \$11,846 on the running account.

G The trial judge held that a claim on a running account is a cause of action known to the law, and ordered that the registrar take an account of all transactions on the running account between Gian Singh & Co. and Bajaj Textiles and Gian Singh & Co. Ltd. and Bajaj Textiles Ltd. from the 14th May, 1951, to the H 31st November, 1962, and kept in the books of Gian Singh & Co. and Gian Singh & Co. Ltd.

The plaintiffs appeal against the decision of the trial judge on four grounds.

I Before I proceed to consider them, I will state the history and nature of the dealings between the parties as found by the trial judge. I quote his own words:—

"From the evidence before me the following facts emerged. Hardial Singh, Inder Singh, Hira Singh and Balwant Singh are brothers. Prior to 1951 they were all partners in the firm of Gian Singh & Co., the firm of Bajaj Textiles and some other firms in Singapore, Malaya and India. Gian Singh & Co. was the firm which indented